

R E M A R K S

In the Notice dated June 14, 2006, the Examiner contends that the Amendment filed on March 28, 2006, in which claims 1-15 were canceled and claims 16-21 were added, was non-responsive because, according to the Examiner, claims 16-21 are not drawn to the elected invention.

In a response filed on October 14, 2006, Fig. 1 was elected for prosecution on the merits, and claims 1, 2, 4, 5 and 9-12 were indicated to be readable on the elected species.

It is respectfully pointed out that all of the structural features of the claimed present invention as recited in currently pending claims 16-21 are shown in Fig. 1, and it is respectfully submitted that the claimed present invention as recited in currently pending claims 16-21 is fully consistent with the invention as originally claimed in elected claims 1, 2, 4, 5 and 9-12.

The Examiner gives three reasons why currently pending claims 16-21 are not directed to the same invention recited in now canceled elected claims 1, 2, 4, 5 and 9-12, namely: (1) the new claims do not recite an LED light source; (2) the new claims do not recite a switching means capable of completely blocking light from being applied to the specimen; and (3) the original claims did not include the limitation of a digital micromirror

device or a computer drive controller to turn the micromirrors on and off.

It is respectfully submitted, however, that the Examiner is not correct. Each of items (1)-(3) is addressed individually below.

(1) The Examiner contends that because the new claims do not recite an LED light source, the new claims are directed to a different invention than the original claims. It is respectfully pointed out, however, that the original elected claims also did not recite an LED light source. In fact, the Examiner identified the use of an LED light source as not being a characteristic of the elected invention. See the Election/Restriction requirement issued on September 20, 2005, in which an "illumination device with LED light source and LED drive controller" are identified as the distinguishing characteristics of non-elected species II. Indeed, the LED light source is not recited in any of the original elected claims 1, 2, 4, 5 and 9-12, but rather is recited in non-elected claims 7, 8, 14 and 15.

Accordingly, it is respectfully pointed out that by not reciting an LED light source, new claims 16-21 recite the same species as original elected claims 1, 2, 4, 5 and 9-12.

(2) The Examiner contends that because the new claims do not recite a switching means capable of completely blocking light

from being applied to the specimen, the new claims are directed to a different invention than the original claims.

As recognized by the Examiner, original elected claim 1 recited "switch means for switching between a state in which the rays of illumination lights is applied to the specimen and a state in which the rays of illumination light is not applied to the specimen."

It is respectfully pointed out, moreover, that original elected claim 4, which depended from claim 1, recited that "the switch means comprises a shutter." And it is respectfully pointed out that new independent claims 16 and 19 recite a shutter.

Accordingly, new claims 16 and 19 do, in fact, recite a structural feature corresponding to the "switch means" of original elected claim 1.

(3) The Examiner contends that since the original elected claims did not recite a digital micromirror device or a computer drive controller to turn the micromirrors on and off, the new claims are directed to a different invention than the original claims.

It is respectfully pointed out, however, that original elected claim 1 recited "a light deflector array...having micro optical deflection portions, which individually deflect the rays

of illumination light." Clearly, therefore, the recitation of a digital micromirror device in new independent claims 16 and 19 is not a departure from the deflector array of micro optical deflection portions recited in original elected claim 1.

In addition, each of original elected claims 9-12 recited a drive controller to control the deflection operations of the micro optical deflection portions of claim 1, as well as the operation of the switch means of claim 1.

Accordingly, it is respectfully pointed out that the original elected claims did, in fact, recite a drive controller.

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In view of the foregoing, it is respectfully submitted that the Examiner's reasons for holding that new claims 16-21 are directed to a different invention than original elected claims 1, 2, 4, 5 and 9-12 are not correct, and it is respectfully submitted that the claimed present invention as recited in currently pending claims 16-21 is fully consistent with the invention as originally claimed in elected claims 1, 2, 4, 5 and 9-12.

Accordingly, it is respectfully requested that prosecution on the merits now proceed in view of the Amendment filed on March 28, 2006.

If the Examiner has any comments, questions, objections or recommendations, the Examiner is invited to telephone the undersigned at the telephone number given below for prompt action.

Respectfully submitted,

/Douglas Holtz/

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